

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20303
Docket Number MW-20341

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Southern Pacific Transportation Company
{ Pacific Lines

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when Truck Driver R. Alegria was not permitted to return to duty after being released for duty by Dr. J. M. Read on several occasions, the latest being September 15, 1971 [System File 011-221 (A)]

(2) Truck Driver R. Alegria be paid at his truck driver's rate for all monetary loss suffered from September 15, 1971 to April 24, 1972 (regularly assigned hours, overtime worked on his position and holiday pay).

(3) The claimant be further paid six percent (6%) interest per annum on the monetary allowance accruing from initial claim date until payment is made.

OPINION OF BOARD: The claim is that the Carrier violated Rule 32 which provides a tripartite medical panel to resolve disputes when the Carrier determines an employee cannot perform service due to his physical condition.

In this case the medical panel was used, resulting in the Claimant's return to work as a truck driver on April 24, 1972. However, the Employees assert that the medical evidence showed the Claimant to be fit for service by September 9, 1971 and, thus, the Carrier should pay his lost wages from that date to April 24, 1972.

The chronology shows that, after two weeks in the hospital, the Claimant was released for work by his attending physician on July 1, 1971. In a July 8, 1971 letter, the Carrier's Chief Surgeon indicated only partial agreement with the fitness report on Claimant, for he, the Chief Surgeon, made Claimant's return to work subject to his not lifting more than 25 pounds. Carrier had no work within this lifting restriction, so the Claimant was continued on leave. On September 15, 1971, the attending physician restated his opinion about Claimant's fitness for work and, in addition, said he knew of no reason why he could not perform full duty without restriction. Under dates of October 28 and November

2, 1971, two additional doctors, after examining him, reported favorably on Claimant's physical condition. Thereafter, under date of October 6, 1971, a Carrier physician reviewed Claimant's medical situation and concluded that he should not drive or handle heavy equipment. On January 28, 1972, the Claimant invoked Rule 32; a medical panel was formed, the neutral physician issued his favorable report on March 14, 1972, and, as indicated, the Claimant returned to work on April 24, 1972.

The foregoing facts, and the whole record, do not show a violation of Rule 32. The panel functioned for about six weeks after its formation and there is no showing of undue delay or other circumstance to indicate that this period was an unreasonable length of time for the exercise of the panel's duties. Indeed, so far as Rule 32 is concerned, this record shows that the Claimant's rights under the rule were honored by Carrier without question; a panel was formed, and the controversy was resolved in the Claimant's favor. In other words, the record merely shows that Rule 32 worked as intended by the parties. The Employees, nonetheless, place significance on the facts that the Claimant had three doctors supporting his position before the panel was formed and that the panel decision ultimately agreed with his three doctors. The notion seems to be that the Carrier's physicians were not justified in disagreeing with three doctors and, therefore, the ultimate panel decision should be made retroactive. We do not concur. The events in this case prior to the implementation of Rule 32 are irrelevant. The obvious purpose of Rule 32 is to have a procedure for reaching a final decision when there are disagreeing medical opinions about an employee's physical condition. Also obviously, the greater the number of doctors who are in disagreement, the greater is the need to have a procedure for resolving the disagreement. We also note that the Claimant could have invoked Rule 32 at any time on or after July 8, 1971, but he waited until January 28, 1972 to do so. If the Claimant was in fact physically fit for service, then his own inattention to Rule 32 accounts for six or seven months of his lost time. Thus, while we can certainly sympathize with the Claimant's economic loss, the record affords no basis on which this Board could award compensation. We shall deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1974.